

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO

3 MERLINDA PEREA, AND FRANCINE
4 PUENTES, Co-Personal
5 Representatives of the
6 Wrongful Death Estate of
7 JERRY PEREA and ON BEHALF
8 OF THE MINOR, BP,

9 Plaintiffs,

10 vs.

11 No. CIV 13-263 RB-RHS

12 CITY OF ALBUQUERQUE,
13 ALBUQUERQUE CITY POLICE,
14 APD OFFICER DAVID BACA and
15 APD OFFICER ANDREW JARAMILLO,

16 Defendants.

17 DEPOSITION OF DAVID BACA

18 July 30, 2014
19 1:34 p.m.

20 Paul Baca Professional Court Reporters
21 500 4th Street, Northwest, Suite 105
22 Albuquerque, New Mexico 87102

23 PURSUANT TO THE FEDERAL RULES OF CIVIL
24 PROCEDURE, this deposition was:

25 TAKEN BY: SANTIAGO E. JUAREZ
26 Attorney for the Plaintiffs

27 REPORTED BY: Mary C. Hankins, CCR, RPR
28 New Mexico CCR #20
29 Paul Baca Professional Court Reporters
30 500 4th Street, Northwest, Suite 105
31 Albuquerque, New Mexico 87102
32 (505) 843-9241



1 Q. And as you parked down the street, about how
 2 far did you park from the actual house where the
 3 incident had generated itself?
 4 A. I think in my deposition [sic], I said about
 5 two or three houses down.
 6 Q. Okay. And you had a clear view of the house
 7 where the incident took place from where you parked your
 8 cars?
 9 A. Is that a question or --
 10 Q. It's a question.
 11 A. -- are you making a statement?
 12 Q. It's a question.
 13 A. Okay. Yes, I did.
 14 Q. And did you see anybody -- before you had any
 15 contact with anybody in the house, did you see anybody
 16 else -- did you see anybody leaving the house or the
 17 area?
 18 A. No.
 19 Q. And then what did you do?
 20 A. I went -- I think I went to the side of the
 21 house, and Officer Jaramillo went to the front of the
 22 house.
 23 Q. And did you have any contact with any of the
 24 residents in the house?
 25 A. I didn't.

1 Q. Officer Jaramillo did?
 2 A. Yes.
 3 Q. Did you have an opportunity to view the
 4 occupants who came out of the house?
 5 A. Yes. I saw a lady.
 6 Q. You saw the lady.
 7 Did you see a man?
 8 A. No.
 9 Q. And Mr. Jaramillo -- Officer Jaramillo --
 10 excuse me -- had a discussion with the woman?
 11 A. Yes.
 12 Q. Did you have any verbal -- did you have any
 13 verbal contact with any of the occupants of the house?
 14 A. No.
 15 Q. So any and all information that was received at
 16 that point from the occupants was received by Officer
 17 Jaramillo?
 18 A. Yes.
 19 Q. And then I take it Officer Jaramillo relayed to
 20 you that the suspect, the person who the call had been
 21 issued on, Mr. Perea, had left the area?
 22 A. Yes.
 23 Q. And did you get any -- let me ask -- all the
 24 information -- tell me if I'm correct -- at that moment
 25 when you're at the house yourself, that you received

1 regarding Mr. Perea, came from Mr. Jaramillo -- Officer
 2 Jaramillo? I'm sorry.
 3 A. No.
 4 Q. Where did you get other information from?
 5 A. Dispatch.
 6 Q. What information did you get from dispatch?
 7 A. The one that we just -- the one that we just
 8 went over. Do you want me to repeat that again?
 9 Q. No.
 10 I'm talking about at the house itself.
 11 A. It was from Officer Jaramillo.
 12 MS. GRIFFIN: Can we take a break?
 13 MR. JUAREZ: Sure.
 14 MS. GRIFFIN: Thank you.
 15 (Break taken, 1:47 p.m. to 1:50 p.m.)
 16 Q. (BY MR. JUAREZ) So I take it then -- we were at
 17 the point of talking about the information you had
 18 received on site was primarily coming from Officer
 19 Jaramillo.
 20 A. Yes.
 21 Q. And did he indicate to you where the subject
 22 was at or what had happened with the subject?
 23 A. Yes.
 24 Q. What was that?
 25 A. He stated he left the area on a bike.

1 Q. Okay. And gave you a general direction which
 2 he fled or --
 3 A. Yes.
 4 Q. -- in which he was going?
 5 A. Yes.
 6 Q. And at that point what did you both do?
 7 A. I called and asked for our air support, because
 8 I knew our air support had arrived on scene, because I
 9 guess they heard the call. And I asked them if they had
 10 seen any subjects leaving the area.
 11 Q. And?
 12 A. They said yes, they did.
 13 Q. Did you get any information as to what
 14 direction he was headed?
 15 A. It didn't make sense, but from what they were
 16 telling me, they said that he left southbound. But it
 17 didn't make sense because the road we were on was an
 18 east-west road.
 19 Q. Yeah.
 20 A. So we proceeded westbound.
 21 Q. And did either one of you eventually make
 22 contact? Which one of you first made contact with the
 23 suspect?
 24 A. Officer Jaramillo.
 25 Q. And how did you become aware of that?

1 you started to give CPR. Something happened that you
 2 gave Mr. Perea CPR.

3 A. Yes.

4 Q. What happened?

5 A. After I got handcuffs on, told dispatch to send
 6 rescue and ambulance regarding a tasing, he was still
 7 kicking and flailing around. And I know I was holding
 8 him for a little bit, and then all of a sudden, we
 9 turned -- because of the way he was -- we were right up
 10 against the fence. I remember I turned him over on his
 11 side for a little bit. Probably -- I don't know --
 12 partially on his side because he was a big boy.

13 He, all of a sudden -- me and Andrew were
 14 checking each other. I says, You okay? He says -- he
 15 says, Are you okay? He said something about your head's
 16 hurt. I'm fine. All of a sudden, he stopped moving.
 17 He wasn't kicking around or moving his arms or anything
 18 like that. So I looked at him, and he looked like he
 19 was turning blue and gray. So I turned him all the way
 20 on his back, checked for a pulse and checked for
 21 breathing. He didn't have any, so I told dispatch to
 22 tell the rescue to step it up because I had somebody
 23 that wasn't breathing. So I started CPR on him.

24 Q. And you were able to revive him?

25 A. Yes.

1 went -- Jerry went into distress again; Mr. Perea went
 2 into distress again?

3 A. Yeah.

4 Q. Did he actually stop breathing again? Could
 5 you tell?

6 A. Well, I don't know about stop breathing. They
 7 turned him over to give him all their medical stuff.

8 Q. Right.

9 A. They were trying to give him that pulse ox.
 10 That's what I learned that it was. But he kept
 11 clenching his fists, and then he would kick his feet.
 12 He was kicking his feet. So we were trying to -- trying
 13 to get his fingers open to put that pulse ox on him.
 14 And the medic was still standing there, so I stepped
 15 back. I stepped back. And I remember they were still
 16 trying to get his finger -- get that stupid thing on his
 17 finger.

18 And finally I didn't see him doing anything
 19 anymore. I told the medics a couple of times, Guys,
 20 he's not moving. They said, Hold on; we're trying to
 21 put -- Guys, he's not moving. And then they finally
 22 turned him over, and that's when they checked him. He
 23 wasn't breathing, and I -- (crying).

24 Q. I know it's difficult, Officer.

25 MS. GRIFFIN: Do you want to take another

1 Q. And then what happened after you revived him?

2 A. I guess at that time everybody started arriving
 3 on scene. I know Albuquerque Fire got on the scene
 4 first. And I told the paramedics what had happened. I
 5 said, He was tased, and then I said, We got him
 6 handcuffed. And then I told them that he stopped
 7 breathing and he didn't have a pulse, and I did CPR on
 8 him. And then they took over.

9 Q. And then he had seemed calm, as I understand
 10 it, and then he started acting out again?

11 A. Yes.

12 Q. And what kind of acting out behavior did he
 13 have that you recall?

14 A. He started kicking at them. He spit -- he spit
 15 all -- he was spitting all over them, spit a mouthful of
 16 blood on one of the -- the one that was treating him.
 17 And then he was banging his head. He kept on banging
 18 his head really hard. He was faceup at that time. They
 19 were checking him out. He was faceup, banging his head.
 20 So I went to my patrol unit, and I got the headgear and
 21 put it on him. And then that's when they told me that
 22 he was spitting all over everybody, so Officer
 23 Jaramillo, I gave him my keys, and he went to my unit
 24 and got a spit sock.

25 Q. And while you were there, did it appear that he

1 break?

2 THE WITNESS: No.

3 I took off the headgear.

4 Q. (BY MR. JUAREZ) And then they took off?

5 A. Yeah.

6 Q. Now, what is CIT?

7 A. Crisis Intervention Team.

8 Q. And did anybody call -- what is the function of
 9 CIT, of the Crisis Intervention Team?

10 A. They're specially trained officers that have
 11 gone through more training in dealing with people that
 12 are in crisis. It could be anything, a range of
 13 anything of somebody that's in crisis.

14 Q. And do these officers get certified?

15 A. Yes.

16 Q. Are you CIT certified?

17 A. Yes.

18 Q. And you were so certified on that day?

19 A. Yes.

20 Q. And did you give a call to the CIT team, or did
 21 you feel that, you know, you pretty much had the
 22 training?

23 A. I don't know what you mean.

24 Q. There is a CIT -- there is a unit?

25 A. No.

1 Q. It's just officers that are CIT?
 2 A. Yes.
 3 Q. Okay. That's what I want to get at.
 4 Did you receive any information as to
 5 Mr. Perea -- whether Mr. Perea was a person in crisis
 6 other than the information that he was acting out at the
 7 house?
 8 A. I need you to repeat that question because I --
 9 I need you to repeat the question because the answer I
 10 have, I don't think it fits the question, so if you
 11 could repeat the question for me.
 12 Q. Okay. In the CAD, when you received
 13 information, did you receive any particular information
 14 from dispatch regarding Mr. Perea's history with the
 15 police or mental -- let's start with history with the
 16 police.
 17 A. He did have a history with the police.
 18 Q. Did you receive any information in terms of his
 19 mental status?
 20 A. I'm going to have to review the CAD on it. I
 21 don't remember specifically (reading).
 22 Q. I can tell you right now we don't have that
 23 one.
 24 A. I remember on my hazard, I know it showed that
 25 he fights with officers, and one time he was involved

1 that was in the house?
 2 A. No.
 3 Q. And you never went in the house --
 4 A. No.
 5 Q. -- to see if there was any kind of damage that
 6 was supposedly done?
 7 A. Not at that time.
 8 Q. During the time that Mr. Perea left the site of
 9 the house and took off on the bike, did you receive any
 10 calls from dispatch indicating that someone was on a
 11 bike threatening to harm anybody, harming himself or any
 12 erratic behavior?
 13 A. No.
 14 Q. When was the first time that you recall being
 15 verbal with Mr. Perea?
 16 MS. GRIFFIN: Object to form.
 17 A. The first time was right when I had exited my
 18 vehicle and went around and him and Officer Jaramillo
 19 were already engaged, right there at the first initial
 20 contact with him at the fence when he was -- he was
 21 flailing around. That's where I remember him looking
 22 right through me. And that's why I kept telling him,
 23 Concentrate on me; hey, buddy, I think I remember, or
 24 buddy -- it seems to work sometimes when I talk to
 25 people in crisis, to concentrate on me. Then he'd slow

1 with one of our SWAT -- on a SWAT situation. I remember
 2 that on a hazard.
 3 Q. Did it indicate to you any mental problems,
 4 PTSD? Did you get anything like that? Schizophrenia?
 5 Anything like that?
 6 A. I don't recall that right off the bat.
 7 Q. From the time that you were dispatched to the
 8 time that there was contact with Mr. Perea, did you
 9 receive any information from anybody that on that day he
 10 had hurt anyone?
 11 A. You mean other than his mom calling in?
 12 Q. Other than his mom calling in and giving you
 13 the information she did, did you receive any information
 14 he had specifically hurt anyone?
 15 A. Just the information from the dispatcher from
 16 his mom, that he was being violent.
 17 Q. Any information that he had possessed weapons
 18 or threatened anybody with a weapon?
 19 A. No.
 20 Q. When you were on site with the elderly woman,
 21 supposedly his mother -- who was his mother -- we can
 22 presume who was his mother and Officer Jaramillo, did
 23 you observe her to be hurt in any form or fashion?
 24 A. No.
 25 Q. And you never had contact with the elderly male

1 down a little bit, and it seemed like I'd get his
 2 attention for a little bit. And then that was the first
 3 time, I believe.
 4 Q. (BY MR. JUAREZ) The CAD doesn't indicate any
 5 kind of particularized violence, does it?
 6 A. As far as?
 7 Q. Hitting someone, shooting someone, cutting
 8 someone, hitting someone.
 9 A. It states -- all it said was it was pretty
 10 vague, which means a verbal fight. That was the 32 part
 11 and throwing furniture, and it didn't say -- it was
 12 general, which means he's throwing furniture around, but
 13 it didn't say he had hit anybody, so they leave it as
 14 vague.
 15 Q. When there is somebody that's struck, is there
 16 a code for that, like you said 32?
 17 A. They could -- we're going into suppositions
 18 now. I mean, I've had everything from subject's 27-4,
 19 which means the subject's been battered, or sometimes
 20 they just put "struck" or -- they can put all types of
 21 different codes on there.
 22 Q. So this one was pretty vague; it was nothing
 23 specific?
 24 A. Right. They also said "negative 57," but that
 25 the mom, when she called, said he was on drugs. So